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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/727,016  
Filing Date: December 03, 2003  
Appellant(s): DUNN ET AL.

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Robert A. Voigt, Jr.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 12/08/2008 appealing from the Office action mailed 07/25/2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 19-27** rejected under 35 U.S.C 103(a) as being unpatentable over Hirth et al. (US Publication No. 2003/0171962 A1).
3. Regarding claim 19, Hirth discloses a method for filling orders for items using an order management system, the method comprising the steps of associating one or more items in an order with one of a set of fulfillment centre objects of an order management system for representing one or more fulfillment centres and one or more electronic marketplaces using a release to fulfillment object (Abstract, Paragraphs [0038] – [0041], [0074]), sending fulfillment instructions relating to one or more items associated with one of a first subset of fulfillment centre objects to a corresponding fulfillment centre, wherein the first subset of the fulfillment centre objects being defined for representing corresponding fulfillment centres (Paragraphs [0041] – [0042]), and sending ordering information relating to one or more items associated with one of the second subset of fulfillment centre objects to the corresponding electronic marketplace, wherein the

second subset of the fulfillment centre objects being defined for representing corresponding electronic marketplaces (Paragraphs [0041] – [0043], [0086], [0136] – [0137], [0146]).

4. Although Hirth does not explicitly disclose the second subset of fulfillment centre objects being defined for representing corresponding electronic marketplaces, the difference between packages assigned to external partners and the second subset of the fulfillment centre objects representing an electronic marketplace is only found in the non-functional descriptive material and is not functionally involved in the steps recited. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Ngai*, 70 USPQ2d 1862 (CAFC 2004); *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

5. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to define the second subset of fulfillment centre objects for representing corresponding electronic marketplaces because the electronic marketplace does not functionally relate to the steps in the method claimed and because the subjective interpretation of the electronic marketplace does not patentably distinguish the claimed invention.

6. Regarding claim 20, Hirth discloses a method in which a release to fulfillment object associated with a selected one of the fulfillment centre objects in the second

subset comprise data representations for tracking orders in the electronic marketplace corresponding to the selected fulfillment centre object (Paragraphs [0043], [0049], [0076], [0145]).

7. Regarding claim 21, Hirth discloses a method in which each fulfillment centre objects represents one or more inventory and fulfillment center priority (Paragraph [0041]).

8. Regarding claim 22, Hirth discloses a method in which the representing of the one or more inventory and fulfillment centre priority in the second subset of fulfillment centre objects represents one ore more of a null inventory and a low fulfillment centre priority (Paragraph [0041], Paragraph [0083]).

9. Regarding claim 23, Hirth discloses a method further comprising the step of pre-selecting items for association with one of the set of fulfillment centre objects based on one or more inventory and fulfillment centre priority (Paragraph [0041], Paragraph [0083] – [0085]).

10. Regarding claim 24, Hirth discloses a method in which the order management system comprises an administrator interface, and the method further comprises the step of an administrator using the administrator interface to confirm or over-ride the pre-selection of items for association with one of the set of fulfillment centre objects (Figure 5, Paragraph [0088]).

11. Regarding claim 25, Hirth discloses a method further comprising the step of grouping items and in which the step of sending ordering information further comprises maintaining the grouping of the items when information corresponding to the grouped

items is sent to the corresponding electronic marketplace ( Figure 1, Paragraph [0010], Paragraphs [0053] – [0055]).

12. Regarding claim 26, Hirth discloses a method in which the step of grouping items comprises grouping the items corresponding to the order from which the items were received by the order management system (Paragraph [0054]).

Regarding claim 27, Hirth discloses a method in which the step of grouping items comprises grouping the items corresponding to an aggregation of items from a single order received by the order management system (Abstract, Paragraph [0010]).

#### **(10) Response to Argument**

**Argument A:** Hirth does not teach "associating one or more items in an order with one of a set of fulfillment centre objects of an order management system for representing one or more fulfillment centres and one or more electronic marketplaces using a release to fulfillment object".

In response, the Examiner respectfully disagrees. Hirth teaches logistic objects associated to a particular activity which implies associating respective objects to represent entities of the fulfillment coordination engine [0074]. Hirth discloses a fulfillment coordination engine used to coordinate fulfillment of an order, comprising one or more items (abstract), by breaking the order into one or more packages that can be fulfilled within the organization, internal partners, or by using external organizations, external partners, entirely or in part ([0038] – [0041]). Use of internal partners to fulfill the order reads on representing one or more fulfillment centres; and the use of external

partners to fulfill the order reads on an electronic marketplace. Internal partners fulfill the order out of physical locations [0049], such as distribution centers, warehouses, or factories that reads on a physical fulfillment centre [0086]. Use of external partners indicates a representation of an electronic marketplace, such a marketplace is further illustrated in Paragraph [0140]. The fulfillment coordination engine is used to coordinate the fulfillment of an order which reads on using a release to fulfillment object, implied by associating respective objects to entities or activities of the fulfillment coordination engine. Furthermore, it is noted that the features upon which applicant relies (i.e., **an electronic marketplace in which suppliers may bid to fill orders placed using a trading mechanism**) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

**Argument B:** Hirth does not *teach sending ordering information relating to one or more items associated with one of a second subset of fulfillment centre objects to a corresponding electronic marketplace.*

In response, the Examiner respectfully disagrees. Hirth discloses a fulfillment coordination engine used to coordinate fulfillment of an order, comprising one or more items (abstract), by breaking the order into one or more packages that can be fulfilled within the organization, internal partners, or by using external organizations, external partners, entirely or in part ([0038] – [0041]). Use of external partners to fill orders is carried out by sending ordering information, in an electronic marketplace, to



organizations outside of the organization receiving the order, such a market is further illustrated in paragraph [0140] of Hirth. Furthermore, it is noted that the features upon which applicant relies (i.e., **an electronic marketplace in which suppliers may bid to fill orders placed using a trading mechanism supported by use of shopping carts, requests for proposals, auctions, reverse auctions, or requests for quotations**) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

**Argument C:** The limitation "*wherein the second subset of the fulfillment centre objects being defined for representing corresponding electronic marketplaces*" is not non-functional descriptive.

In response, the Examiner respectfully disagrees and points out that the limitation as phrased was viewed to be non-functional descriptive. The functional feature of the limitation is defining for sake of representing an electronic marketplace. The difference between the work order packages assigned to external partners in Hirth and the second subset of the fulfillment centre objects of instant application are not functionally distinct in being defined to represent corresponding electronic marketplaces. In this case, applicant uses the language second subset of fulfillment centre object to represent the electronic marketplace which is represented by Hirth in his disclosure of assigning work order packages to external partners. Furthermore, in

the event that the limitation is not descriptive material, it would have been obvious to define the work order packages to represent a corresponding electronic marketplace.

**Argument D:** Hirth does not teach *"a release to fulfillment object associated with a selected one of the fulfillment centre objects in the second subset comprise data representations for tracking orders in the electronic marketplace corresponding to the selected fulfillment centre object"*.

In response, the Examiner respectfully disagrees. Hirth teaches the concept of an object in Paragraph [0074], logistic objects associated to a particular activity imply associating respective objects to represent entities of the fulfillment coordination engine. The implementation of the fulfillment coordination engine to achieve data representation is disclosed in Paragraph [0101] of Hirth. Hirth discloses tracking orders as an entity or variable of the fulfillment coordination engine in Paragraph [0145].

**Argument E:** Hirth does not teach *"each fulfillment centre objects represents one or more inventory and fulfillment center priority"*.

In response, the Examiner respectfully disagrees. Hirth teaches setting a priority associated with an order that is assigned to a partner to fill an order with its available inventory (Paragraph [0041]). Thus, Hirth reads on applicants limitation as currently recited. The concept of fulfillment centre objects and data representations are detailed in the discussion of the previous arguments.

**Argument F:** Hirth does not teach "representing of the one or more inventory and fulfillment centre priority in the second subset of fulfillment centre objects represents one or more of a null inventory and a low fulfillment centre priority".

In response, the Examiner respectfully disagrees. Hirth teaches the concept of an object in Paragraph [0074], logistic objects associated to a particular activity imply associating respective objects to represent entities of the fulfillment coordination engine. The implementation of the fulfillment coordination engine to achieve data representation is disclosed in Paragraph [0101] of Hirth. Hirth teaches rules and parameters for setting a priority associated with an order that is assigned to a partner to fill an order with its available inventory (Paragraph [0041]). Hirth further teaches that the available-to-promise (ATP) service is used to check the availability of an order quantity of a product for supplying the product by a certain date [0083]. The ATP service is able to adjust the parameters of the logistic process including changing partners, (setting priority of partners to fill order [0041]), to fill an order based on the inventory level (availability of order quantity) of the partners, which implies representing one or more of a null inventory and a low fulfillment centre priority.

**Argument G:** Hirth does not teach "pre-selecting items for association with one of the set of fulfillment centre objects based on one or more inventory and fulfillment centre priority".

In response, the Examiner respectfully disagrees. Hirth teaches rules and parameters for setting a priority associated with an order that is assigned to a partner to

fill an order with its available inventory (Paragraph [0041]). Hirth teaches that the product selection or substitution program can substitute products based on predefined parameters [0085], thus reading on being able to **pre-select items for association** with one of the set of fulfillment centre objects based on one or more inventory and fulfillment centre priority.

**Argument H:** Hirth does not teach "using the administrator interface to confirm or over-ride the pre-selection of items for association with one of the set of fulfillment centre objects".

In response, the Examiner respectfully disagrees. Hirth teaches, in Paragraph [0088], services providing inbound and outbound interfaces to different order systems wherein the service exchanges status information with these systems and handles subsequent changes in the orders reading on being able to over-ride or change entities within the fulfillment coordination engine, in this case the pre-selection of items detailed in argument G.

**Argument I:** Hirth does not teach "maintaining the grouping of the items when information corresponding to the grouped items is sent to the corresponding electronic marketplace".

In response, the Examiner respectfully disagrees. Hirth discloses a fulfillment coordination engine used to coordinate fulfillment of an order, comprising one or more items (abstract), by breaking the order into one or more packages that can be fulfilled

within the organization, internal partners, or by using external organizations, external partners, entirely or in part ([0038] – [0041]). The work packages assigned to partners can then be consolidated and redirected to the originator of the order (Figure 1, Paragraphs [0010], [0043]). Splitting the original work orders and assigning work packages to partners and then collecting fulfillment of the work orders from partners reads on maintaining the grouping of items when information corresponding to the grouped items is sent to the corresponding electronic marketplace.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Faris Almatrahi/

Examiner, Art Unit 3627

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/F. Ryan Zeender/

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Vincent Millin /vm/

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